

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

United States of America,)	
)	No.: 8:09-cr-00786-GRA-1
v.)	
)	ORDER
Virgil Womack,)	(Written Opinion)
)	
Defendant.)	
_____)	

This matter is before this Court for a ruling on Defendant's Motion for Contempt and Motion for Return of Property, both filed on February 24, 2010.

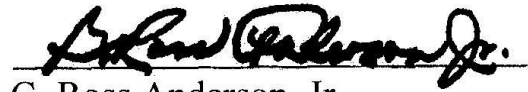
On February 17, 2010, this Court sentenced Defendant to twenty-four months imprisonment followed by three years of supervised release. On February 18, 2010, Defendant filed a notice of appeal to the U.S. Court of Appeals for the Fourth Circuit, and Defendant's appeal is currently pending. As such, this Court no longer has jurisdiction over any facet of Petitioner's case. *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) ("The filing of a notice of appeal is an event of jurisdictional significance--it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal").

To the extent this Court might have jurisdiction over the motions as ancillary matters, this Court declines to hear these motions at this time. "[A] federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously." *Id.* Additionally, should Defendant wish to re-file his Motion

for Return of Property after his appeal, this Court reminds Defendant that a prisoner's post-conviction motion for the return of property is a "civil action" under the provisions of the Prisoner Litigation Reform Act ("PLRA"). *See United States v. Jones*, 215 F.3d 467, 469 (4th Cir. 2000). "The PLRA amended the *in forma pauperis* statute, 28 U.S.C.A. § 1915, such that a prisoner who brings a civil action . . . must pay the full filing fee." *Id.* at 469.¹

IT IS THEREFORE ORDERED that this Court lacks jurisdiction to rule on Defendant's Motion for Contempt and Motion for Return of Property, as well as any other motions Defendant has filed with this Court.

IT IS SO ORDERED.


G. Ross Anderson, Jr.
Senior United States District Judge

February 26, 2010
Anderson, South Carolina

¹ The PLRA allows the prisoner to pay the filing fee in installments through his prison account. Further, a district court has the discretion to allow a prisoner to bring a civil action even if he has no assets and no means to pay the fee, assuming the prisoner can make a sufficient showing to the Court that he is entitled to such treatment.

NOTICE OF RIGHT TO APPEAL

Pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure, Defendant has the right to appeal this Order within sixty (60) days from the date of its entry. Failure to meet this deadline, as modified by Rule 4 of the Federal Rules of Appellate Procedure, **will waive the right to appeal.**